

Mandira
Salgaonkar

Digitally signed
by Mandira
Salgaonkar
Date: 2021.02.20
21:33:58 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.453 OF 2020

- | | | |
|--|---|----------------------|
| 1. Siddaram Hanmant Dudhbhate |] | |
| Residing at Village Hotagi Maddiwasti, |] | |
| Taluka South Solapur, Dist-Solapur |] | |
| |] | |
| 2. Aarif Asif Shaikh |] | |
| Residing at House No.33, Keshav Nagar, |] | |
| Sadar Bazar, Solapur |] | |
| |] | |
| 3. Ambadas Govind Sakhare |] | |
| Residing at Patil Nagar, Behind Hotel |] | |
| Chetan, Solapur |] | .. Appellants |

VERSUS

- | | | |
|---|---|-----------------------|
| 1. The State of Maharashtra |] | |
| (At the instance of MIDC Police Station |] | |
| District Solapur Vide C.R.No.926/2020) |] | |
| |] | |
| 2. Soni Anil Dede |] | |
| Residing Footpath near Banshankari |] | |
| Hotel, |] | |
| MIDC, Solapur |] | .. Respondents |

Mr.Vikram V. Phatate for the Appellants.

Mr.J.PYagnik, A.P.P for Respondent No.1/State.

**CORAM : S.S.SHINDE &
MANISH PITALE, JJ.**

RESERVED ON : 04th FEBRUARY, 2021
PRONOUNCED ON : 18th FEBRUARY, 2021

JUDGMENT (PER MANISH PITALE, J.)

1. By this appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 **(hereinafter referred to as “the Act of 1989)**, the appellants have challenged the order dated 2nd November, 2020 whereby their bail applications were rejected. The appeal specifically refers to the impugned order dated 2nd November, 2020 passed by the Court of Additional Sessions Judge, Solapur on Exhibit-5 in Special Case No.356 of 2020 wherein application for bail filed on behalf of the appellant Nos.1 and 2 was rejected. At the same time, the bail application bearing Exhibit 3 in the same case pertaining to appellant No.3 was also rejected. The present appeal has been filed by all the three aforesaid accused/appellants, in order to claim that they are entitled for the relief of grant of bail.

2. In the present case, FIR dated 14th July, 2020 came to be registered against appellant No.3 and others pertaining to death of brother of respondent No.2 (original complainant). The dead body of the victim was found on 13th July, 2020. Respondent No.2 had approached the police stating that the deceased was her brother, who had been assaulted by appellant No.3 and others, which had resulted in his death. Pursuant to registration of FIR, investigation was undertaken and the police not only arrested appellant No.3, but also appellant Nos.1 and 2 on the basis that the investigation had revealed active role of all the three appellants in the death of the victim. Upon completion of investigation, charge-sheet was filed on 28th September, 2020.

3. The appellants filed bail applications before the court below, claiming that there was no causal connection between the incident that was attributed to them dated 12th July, 2020 and the dead body of the victim being found on the next day i.e. on 13th July, 2020. It was claimed that even if the alleged assault carried out by the appellants on 12th July, 2020 was to be taken into consideration, there was nothing to show that the said incident had caused the death of the victim. The last seen theory sought to be applied is also disputed for the reason that the victim, even as per the allegations levelled against the appellants, had left their custody in the evening of 12th July, 2020 and his dead body was found on the next day in the afternoon.

4. The court below took into consideration the aforesaid factors, particularly statements made by certain witnesses and thereupon came to the conclusion that the appellants did not deserve to be enlarged on bail.

5. In the present appeal, Mr.Phatale, learned counsel appearing for the appellants, vehemently submitted that the appellants were sought to be implicated purely on conjectures and surmises. It was submitted that even if the statements of the witnesses recorded during investigation were to be taken into consideration, there was nothing to show that the appellants may be held responsible for the death of the victim. It was submitted that the postmortem report on record clearly indicated that the major wound found on the body of the deceased was after his death and it was due to stray dogs eating one of the legs of the deceased. It was submitted that the said report did not indicate that the alleged role of the appellants had

anything to do with the death of the victim. It was further submitted that the bail applications of the appellants ought not to have been rejected only because they were alleged to have committed a serious offence. It was submitted that none of the ingredients of offences under the Indian Penal Code or the Act of 1989 are made out on the basis of the material on record and, therefore, the appeal deserves to be allowed.

6. Mr.Yagnik, learned APP appearing on behalf of respondent No.1/State, opposed the present appeal and he submitted that there were eye witnesses to the incident that took place on 12th July, 2020, when the appellants had physically beaten up the victim and they had also assaulted minor daughter of respondent No.2, who had also given statement to the police. It was submitted that there were eye-witnesses to the manner in which the victim was assaulted by the appellants and that the statements given by such eye-witnesses read with the statements of respondent No.2 and her daughter, clearly connect the appellants to the incident that took place on 12th July, 2020. It was submitted that such statements not only indicated the involvement of the appellants in the death of the victim, but they also indicated their utterances, which would show that the offences under the Act of 1989 were also committed in the present case. It was submitted that there was possibility of witnesses being threatened, if the appellants were granted bail.

7. Although respondent No.2 was served in the matter, none appeared on her behalf.

8. With the assistance of learned counsel appearing for the appellants and learned APP appearing on behalf of respondent No.1/ State, we have perused the material available on record. The statement of minor daughter of respondent No.2 shows that she alongwith the victim i.e. her maternal uncle, were detained by the appellants on 12th July, 2020 in the afternoon, on the allegation that he had stolen a cable wire. Appellant No.3 was the watchman of the premises from where the victim had allegedly stolen the cable wire, while the other appellants were also concerned with the owner of the said premises. In her statement, the minor daughter of respondent No.2 described in detail, how she and the victim were detained by the appellants and in the process, they assaulted the victim by alleging that he had stolen the cable wire. The appellants allegedly also gave a blow on the hand of the said minor daughter of respondent No.2 while asking about the details as to how the stolen cable wire was disposed of. In her statement, the minor daughter of respondent No.2 referred to the presence of a person nearby, who had seen the incident.

9. There is also a statement of one Subhashchandra Arjun Mashale. In his statement, recorded during the course of investigation by the police, the said person specifically named all the three appellants as having detained the victim and the said minor daughter of respondent No.2. He also described the manner in which the appellants assaulted the victim while asking him as to how he had stolen the cable wire. It is specifically stated that they assaulted the victim by means of cable wire and PVC pipe. It was also stated by the said person that respondent No.2 had reached the

place of incident and in her presence also, the appellants had assaulted the victim. This is confirmed by the statement of respondent No.2 herself.

10. There is also a statement of Shrishail Inchagiri, who stated that appellant No.2 was working as supervisor at the office of the nearby premises where construction was being undertaken. This person further specifically named all the three appellants and he described the manner of assault that they carried out on the victim in the same manner in which the said Subhashchandra Mashale had described. Thus, there are atleast four eye-witnesses, including the said minor girl, who saw the manner in which the appellants assaulted the victim and caused injuries to him on the allegation that he had stolen the cable wire.

11. Learned counsel for the appellants placed much emphasis on statements of other persons recorded by the police during investigation wherein it was stated that the body of the victim was found on 13th July, 2020 with stray dogs roaming around, thereby emphasizing that the major injury suffered on the leg of the victim was a result of being attacked by such stray dogs. Much emphasis was also placed on the statement given by the person during the investigation, who had stated that the victim himself had claimed before that person about having been assaulted by the persons of "Karkhana". It is submitted that the said statement clearly belied the assertions made by the said eye-witnesses and certainly raises suspicion about the manner in which the incident has been described by the so called eye-witnesses.

12. We have given our anxious consideration to the said contentions raised on behalf of the appellants. We have perused the material on record in detail and at this stage, we find that the involvement of the appellants is *prima facie* made out on the basis of the statements of eye-witnesses as also the statement of respondent No.2 and her minor daughter, who had infact, accompanied the victim when he was beaten up by the appellants on 12th July, 2020. In this backdrop, the emphasis placed by the learned counsel appearing for the appellants on the statements of other witnesses and the fact that in the postmortem report, the opinion as to cause of death was reserved, will not take the case of the appellants for grant of bail any further. We are of the opinion that the material on record is appreciated in the correct perspective by the court below, while rejecting the bail applications of the appellants.

13. Further, we also find from the record that the test identification parade was carried out wherein the minor daughter of respondent No.2 has identified the three appellants as the persons, who had assaulted the victim on 12th July, 2020. This is also a relevant factor indicating that there is sufficient *prima facie* material against the appellants in the present case.

14. Considering the strata of society to which respondent No.2 and her minor daughter belong and the manner in which, they have described the assault carried out by the appellants on the victim, we are of the opinion that there is a possibility of respondent No.2, her minor daughter and the eye-witnesses also being presurried, if the appellants are directed to be released on bail. Hence, we find that there is no merit in the present appeal.

15. Accordingly, the Criminal Appeal is dismissed. However, we direct the trial court to expedite the proceedings in the trial so as to complete the same as early as possible, and in any case, within a period of one year from today.

16. The observations made here-in-above are, *prima facie*, in nature and confined to the adjudication of present appeal only.

17. The Criminal Appeal stands disposed of.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)